

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4188 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHIKHALAL NANJIBHAI

Versus

COLLECTOR, AMRELI

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Appearance:

MR IM KAPUR for Petitioner

MS PS PARMAR for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/06/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner is challenging by this Special Civil Application the order dated 28th January, 1983, annexure 'C' of the Assistant Collector, Amreli, passed under sec.6-A of the Essential Commodities Act, 1955, forfeiting 183.5 bags of cement, and the order of the appellate authority confirming the said order.

3. The appeal has been dismissed only on the ground that it is barred by time. It was the case of the petitioner that 183.5 bags of cement were lying at his house which belonged to the Government. He was given the contract of the construction of Laboratory building by the P.W.D. and it had supplied 200 bags of cement for the said work. The unutilised 183 bags of cement were kept in his house as there was no adequate facility for storing the cement at site. The Assistant Collector, Amreli, has recorded a finding of fact that the petitioner kept at home 183.5 bags of cement which were supplied by D.E. (R&B) for Library building construction work at Untwad. So it is a finding of fact that these 183.5 cement bags were of the Government given to the petitioner for the Government work. The Assistant Collector, Amreli found fault with the petitioner that he ought to have stored the cement given to him by the Government at site and in case it was required to be stored elsewhere he ought to have taken prior permission from the competent authority, which he had not obtained. On the basis of this finding, the Assistant Collector, Amreli, has drawn an inference that there are sufficient reasons to believe that such a big stock was collected with a view to earn big profit with a malafide intention. I do not find any material on record to support this finding of the Assistant Collector, Amreli. Once it has accepted that 183.5 bags belonged to the Government which had been given to the petitioner by the Government for Government work, it is difficult to accept that there is a contravention of Clause 18 of the Gujarat Cement (Licensing and Control) Order, 1978.

4. Clause 18 of the said Order provides that no person other than a license holder shall acquire cement except under and in accordance with a permit in Form "E" issued by the Permit Officer. The authority has accepted that the cement belonged to the Government. So the petitioner was storing the Government cement for which he was not required to have any permission, then how this clause is applicable to the present case. It cannot be said to be a case where any of the contravention of the said clause has been made by the petitioner. In case, the petitioner had stored those cement bags at his house for ulterior motive as pointed out by the Assistant Collector, Amreli, he could have been liable for other offence or for some other penalty, but not for the forfeiture of the cement bags for contravention of clause 18 of the aforesaid order. The cement was not of the petitioner, but it was of the Government, and as such, there could not have been any forfeiture of the same.

The learned counsel for the respondents is unable to justify the decision given in the present case.

5. When the order of the Assistant Collector, Amreli, itself is bad in law, this Court will not nonsuit the petitioner only on the ground that the appeal was dismissed on the ground of limitation. I do not find any substance in the contention of the respondent that when the appeal has been dismissed on the ground of limitation and the petitioner is unable to give out any sufficient ground for delay in filing of the appeal, this Court should not interfere in the matter as the order of the lower authority has been merged in the order of the appellate authority. Once this Court has found the order of the authority, Assistant Collector, Amreli, bad in law it will not allow it to stand though the appeal has been dismissed on the ground of limitation.

6. In the result, this Special Civil Application succeeds and the order of the Assistant Collector, Amreli, dated 28th January, 1983, annexure, 'C' and that of the appellate authority dated 21st July, 1983, annexure 'J1' are quashed and set aside. Rule is made absolute with no order as to costs.

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